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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1933

## No. 565

RUTH LOUGHRAN, PETITIONER,

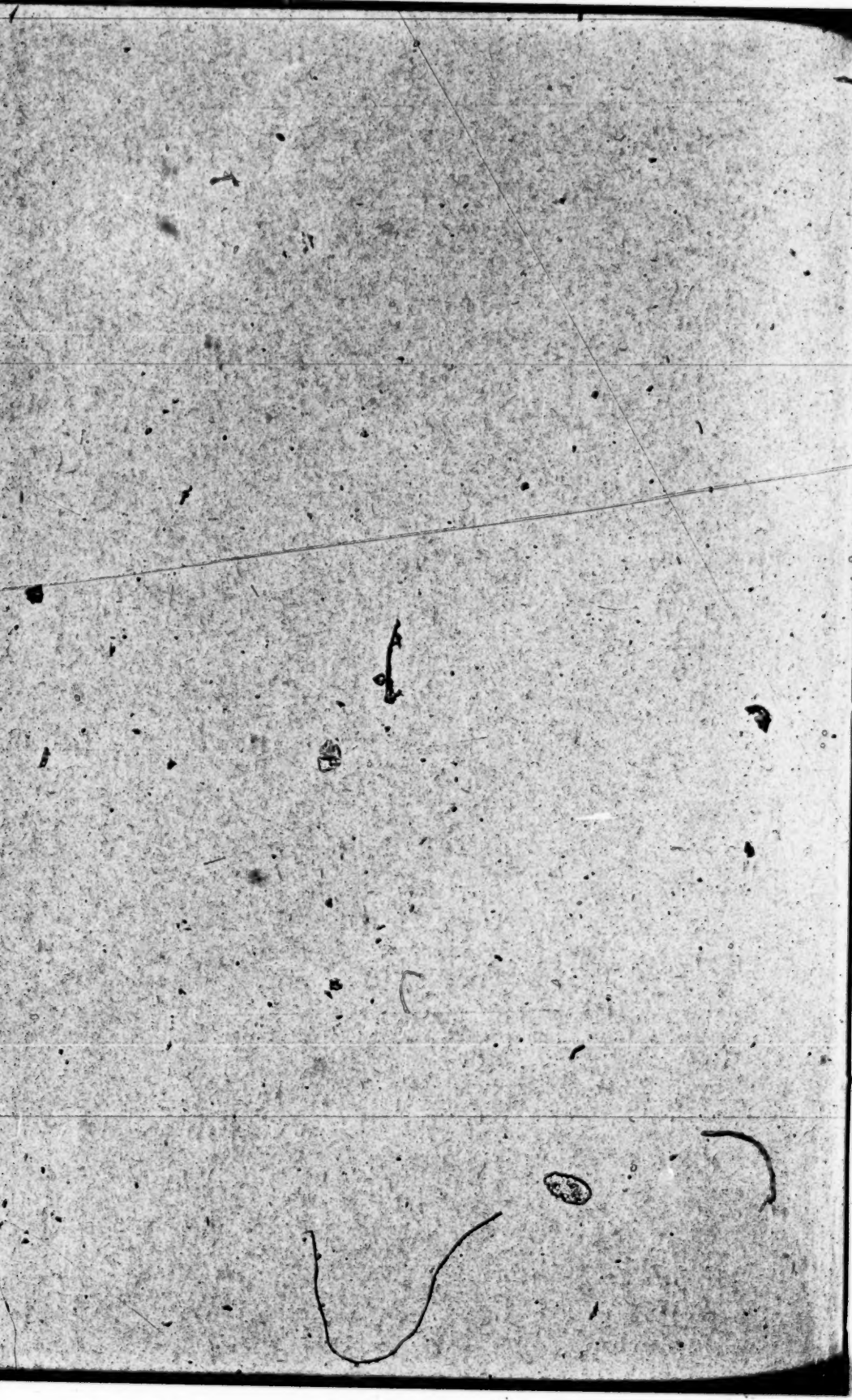
vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN, AND CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED OCTOBER 31, 1933

CERTIORARI GRANTED DECEMBER 4, 1933



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 21, 1933

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**IN SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT.**

Equity. No. 54647

RUTH LOUGHRAN, Complainant,

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Defendants

AMENDED BILL—Filed August 29, 1932

To the Honorable the Justices holding the Equity Court of the District of Columbia:

By leave of court first had and obtained, your complainant, Ruth Loughran, respectfully shows to the Court as follows:

I. That she is a resident of the District of Columbia, and a citizen of the United States, and brings this suit in her own right.

II. That the defendants are citizens of the United States and residents of the District of Columbia, and are sued as trustees under the last will and testament of Daniel Loughran, Sr., deceased, and said defendants are further sued as voluntary trustees, de son tort, of the rents and profits of the real estate belonging to the estate of Daniel Loughran, Sr., and the estate of Daniel Loughran, Jr., and to this complainant as the widow of Daniel Loughran, Jr., as will more fully hereinafter appear.

III. That on December 12, 1924, under decree of the Supreme Court of the District of Columbia, your complainant was divorced absolutely from her then husband, Henry Daye, and that for a year or more prior to said absolute divorce being granted in the Supreme Court of the District of Columbia, she had removed from the District of Co-

lumbia, and made her home and residence in the State of Florida, in which state, and while a bona fide resident thereof, she was married to Daniel Loughran, Jr., on January 16, 1926, by license duly obtained in said State, and by a [fol. 3] marriage ceremony duly celebrated before Honorable J. N. Milton, County Judge of Columbia County, State of Florida, a copy of the marriage certificate so celebrating said marriage being attached hereto as Exhibit "A" to this bill of complaint.

IV. That subsequent to her said marriage on January 16, 1926, to said Daniel Loughran, Jr., she maintained a residence in said State of Florida with said Daniel Loughran, Jr., until along about July, 1927, spending all of her time in said State from the date of her said marriage until July, 1927, except for visits to her mother in the State of Virginia. That on or about July, 1927, her said husband Daniel Loughran, Jr., established a legal residence in Alexandria, State of Virginia, and while a legal resident in the City of Alexandria, State of Virginia, there wrongfully instituted a suit against your complainant for an absolute divorce, to which your complainant filed her cross-bill, and that in due course the said cause came on for trial and the bill of complaint against your complainant herein was dismissed, and the relief therein prayed for denied, and the cross-bill, filed by your complainant, was sustained, and the relief therein prayed for granted, the terms of the order of the Corporation Court of said City of Alexandria, State of Virginia, being as per copy thereof hereto attached and marked Exhibit "B".

V. That your complainant further says that the marriage of herself and said Daniel Loughran, Jr., in Columbia County, State of Florida, was in all respects a marriage in good faith, duly celebrated in accordance with the laws of the State of Florida; that no lawful impediment against said marriage existed, and that the same is entitled to the full faith and credit of this court, and full legal recognition; that likewise a decree of limited divorce and alimony, in favor of your complainant, granted to her by the Corporation Court of the City of Alexandria, State of Virginia, was obtained in an adversary proceeding, duly prosecuted by her; that the decree granted therein remains in effect, unmodified or unamended; that the complainant therein,

your complainant's deceased husband, was the cross-defendant therein; that during his lifetime he accepted the terms of said decree and complied therewith, in part; that the same is a subsisting, effective, final and binding decree of said court, and that the same is entitled to full faith and [fol. 4] credit of this court, and that the same, in law, entitles your complainant to the full benefits awarded thereunder as to all rights to which she, as the widow of said Daniel Loughran, Jr., deceased, is entitled, and also to the benefits which had accrued to her thereunder prior to the death of said Daniel Loughran, Jr., and said decree, and the terms thereof, are pleaded herein, as establishing the good faith and finality of said decree and its binding effect upon the estate of her said deceased husband, Daniel Loughran, Jr.

VI. Plaintiff further shows to the court that on, to wit: the 26th day of April, 1917, Daniel Loughran, Sr., a resident of the District of Columbia, died testate, leaving as his heirs-at-law Daniel Loughran, Jr., the husband of your complainant, and the following: Joseph Loughran, Edward Loughran, John Loughran, Charles Loughran, Margaret Loughran, Regina Loughran, Katherine Loughran, Mary Loughran Duke, and Donald Carter. That upon his death, said Daniel Loughran, Sr., was the owner of much valuable real estate in the District of Columbia, same being of the fair value of more than one million dollars, ($1,000,000), which said property was, to a large extent, rented and producing large revenues, and that by the terms of the last will and testament of said Daniel Loughran, Sr., deceased, which is duly probated among the records of the Probate Court of the District of Columbia, said testator appointed, as trustees of all of said real estate and to collect the rents thereof and to disburse the same ratably to his heirs-at-law, John Loughran, Charles Loughran, and Joseph Loughran, as trustees under said last will and testament, said appointment of said trustees being accepted by them, and upon the death of said testator, said trustees assumed the duties of such trustees and took charge and possession of said real estate and began collections of said rents and payments of expenses on said property and disbursements to the heirs-at-law as their interests appeared. Upon information and belief, obtained since the filing of her original bill herein, from the joint and several answer of the defendants filed

herein, your complainant alleges and charges that prior to the death of Mary Loughran, widow of Daniel Loughran, Sr., the defendants herein were trustees for the collection of the rents and profits of all the real estate belonging to [fol. 5] the estate of Daniel Loughran, Sr., and that subsequent to the death of said Mary Loughran, widow of Daniel Loughran, Sr., said defendants have acted as trustees for the collection of all of said rents and profits, although without authority from the last will and testament of the said Daniel Loughran, Sr., so to do; that without such authority, they have proceeded as voluntary trustees, de son tort, to collect such rents and profits and as set out in their said joint and several answer herein filed to your complainant's original bill of complaint, that as to the terms of said trust so assumed your complainant refers to the admission of paragraph 3 of said joint and several answer, in which the terms of said voluntarily assumed duty or trust by said defendants are set out, and your complainant says that the actions of said trustees, as set out by them, constitute them, in law, trustees for the benefit of the estate of Daniel Loughran, Jr., and also for the benefit of your complainant, as the widow of Daniel Loughran, Jr., based upon her right to receive a portion of said rents and profits as said widow.

VII. Subsequent to September 6, 1931, the date of said Daniel Loughran, Jr.'s death, and up to the present time, the said defendants herein, John Loughran, Joseph Loughran and Charles Loughran, have continued to act as such voluntary trustees in the collection of the rents and profits of said real estate, the management thereof, and the disbursement of the net proceeds, except as hereinafter alleged.

VIII. As alleged in the preceding paragraph, Daniel Loughran, Jr., husband of your complainant, died, leaving an alleged last will and testament now pending for probate in the Probate Branch of the court, wherein and whereby his interest in the estate of his father were disposed of as by said alleged last will and testament will appear. Complainant shows, however, that a proper protest to the probate of said last will and testament was presented to said Probate court in due course, and is pending for consideration in connection with the proposed probate thereof, said protest raising the question of the domicile of said Daniel

Loughran, Jr., deceased, as well as the mental condition of said decedent at the time of the execution of said alleged last will and testament, and your complainant says that it [fol. 6] will be many months before said instrument has been disposed of by proper order and decree of this court.

IX. Your complainant further shows that on September 6, 1931, when Daniel Loughran, Jr., her husband, died, he was indebted in various amounts; that one of the debts owing by him was owing to your complainant on account of allowances due her under the final decree of limited divorce granted her, as shown by a copy thereof, Exhibit "B" hereto, said sum amounting to approximately Two Thousand Dollars ($2,000.00), no part of which has since been paid by the defendants herein, or anyone representing the estate of said decedent, although due proof thereof has been filed in the Probate Court of the District of Columbia.

X. Notwithstanding the fact that said Daniel Loughran, Jr., died September 6, 1931, the said John Loughran, Charles Loughran and Joseph Loughran, as voluntary trustees of the rents and profits of the real estate of said Daniel Loughran, Sr., continued to collect the rents and profits from the real estate of said Daniel Loughran, Sr., which had descended by virtue of his will to his children and heirs-at-law, and your complainant is informed and believes that on the death of said Daniel Loughran, Jr., there had accumulated in the hands of said defendants a sum of at least $6,699.65, over and above all proper disbursements to that date, and upon information and belief (which information has been obtained from the defendants) there has since accumulated up to May 13, 1932, a net balance of $19,447.13 from the collection of rents belonging to the estate of Daniel Loughran, Sr., by said defendants, and your complainant says that since May 13, 1932, there has accumulated an additional sum of at least $10,000.00, after payment of all proper charges and expenses for collection of the same, and that said defendants have collected, or should have collected and have in hand, total net rentals from September 6, 1931, to date, or at least $35,000, or the sum of $3,500, net to each of the ten (10) heirs-at-law of said decedent; that the estate of Daniel Loughran, Jr., would thereby be entitled from said defendants to have and receive at least the sum of $3,500, as its one-tenth share of

said net rentals from said properties so collected by said [fol. 7] defendants, subject to the deduction of any sum due and payable directly to your complainant.

XI. That the net sum of $3,500.00, or more, belonging to the estate of Daniel Loughran, Jr., deceased, as herein set forth, was collected by said defendants, and they were required under their voluntary trusteeship to hold the same in trust, unless and until the same were paid over to a proper legal representative of the estate of Daniel Loughran, Jr., deceased, appointed by the Probate Court of the District of Columbia, or to your complainant, and that said defendants were without right or authority to do any other act or thing with said funds, and were especially without right or authority to elect, or choose, or to decide to pay from said funds any amount alleged to be due, or believed by them to be due, to any of the creditors of said Daniel Loughran, Jr., deceased, pending the appointment of a proper legal representative of said estate to whom said funds could be paid, for the purpose of having said debts paid under the orders of this court, but your complainant says that notwithstanding the duties of said defendants, and disregarding the same, and to the great prejudice of your complainant, and in direct violation of the law, and without regard to the authority of the Probate Court, or the pendency therein of the proposed probate of the will of Daniel Loughran, Jr., that said defendants have usurped the authority of said Court, and as complainant is informed and believes, said information coming chiefly from said defendants, have taken the funds belonging to the estate of said Daniel Loughran, Jr., deceased, and paid the same, or the greater portion thereof, to certain creditors and alleged creditors, selected by said defendants to be paid, paying, among other things, excessive and illegal bills for funeral expenses and other purposes, and failing and neglecting utterly to pay to your complainant either a portion of the sum due her by her said husband at the time of his death, or to pay to her any reasonable portion of the net rentals to which she is entitled as the widow of said decedent, and that your complainant says that since the death of her said husband, said defendants have deliberately and purposely withheld from her, and have failed and refused to pay to her even one dollar or one cent from the assets of said estate, and, on the contrary,

have used every means possible to prevent her receiving [fol. 8] anything from said estate, and have embarrassed and humiliated her by withholding from her any payment from said rents and profits or assets, although repeated and urgent demands for such payments have been made, and your complainant says that said action has been prompted by a desire to so embarrass your complainant financially as to coerce and force her to agree to some inequitable, unfair and unjust settlement of her rights as a creditor and as the widow of said Daniel Loughran, Jr., deceased—requiring and forcing your complainant to come into this court for equitable relief; that this action has been taken in face of the fact that said estate is abundantly solvent, is indebted for only a small portion of the value of the personal assets thereof, and the real estate and the net rents and profits thereof being free from any debt or claim whatsoever.

XII. Your complainant specifically shows that on May 13, 1932, from information obtained from said defendants, there was due to Daniel Loughran, Jr.'s estate, $2,614.67 as his share of the net rentals of the real estate belonging to Daniel Loughran, Sr.'s estate, and that on said date there had been paid out by said trustees a total of $3,027.11, alleged to be paid on account of the debts of Daniel Loughran, Jr., deceased, one of which items was a payment of $1,605.00, funeral expenses to the firm of Joseph Gawlor, paid under date of December 6, 1931; that another item so paid was the sum of $421.00 paid to General Motors Acceptance Corporation on account of balance due on an automobile owned at his death by said Daniel Loughran, Jr., and by the alleged will and testament of said Daniel Loughran, Jr., now protested by complainant in the Probate Court of the District of Columbia, which by said will was bequeathed to a sister of said defendants, and your complainant says that said payment of said funeral expenses was unauthorized by any proper court, was excessive, was in violation of the rules of the Probate Court, and was a duty and prerogative solely either of administrator, collectors or executor of said estate appointed by said Probate Court, and that the same facts are true as to the payment of a bill for $85.00 for flowers expended at the time of the death of said decedent, without authority of said Probate Court; that likewise certain obligations due, or alleged to be due, by said Daniel Loughran, Jr.,

were improperly paid as follows, to wit: the sum of $45.00 [fol. 9] paid to the defendant Charles Loughran, individually, and other bills which will be more fully made to appear at the hearing hereof.

XIII. Your complainant further shows that on the 14th day of June, 1932, the Probate Court of the District of Columbia, upon petition by your complainant, caused to be appointed as collectors of the estate of said Daniel Loughran, Jr., R. H. McNeill, your complainant's counsel herein, and John Loughran, which said collectors duly qualified as such, and that thereafter prompt request and demand upon said defendants was made by R. H. McNeill, collector, said demand calling upon said defendants to pay over and deliver to said collectors all of the net cash in their hands belonging to the estate of Daniel Loughran, Jr., deceased, amounting to the sum of $3,500.00, as herein alleged, and that said demands have been repeatedly made, but that notwithstanding said demands, no part of said sum has been paid; that likewise your complainant has made repeated demands for payment to her of the amounts due her by the estate of her deceased husband, and of the amounts to which she is entitled, and of her share as the widow of her said deceased husband in the rents and profits from his said real estate, but that notwithstanding said demands she has never received one cent from the defendants, or either of them, nor has one cent been paid by them to said collectors from the rentals collected by said defendants, and that the whole of said sums are still being held by said defendants, less such amounts as have been paid out by them improperly and illegally to alleged creditors of said decedent, Daniel Loughran, Jr. Your complainant further shows that notwithstanding the pendency of this proceeding and the insistence of one of the collectors of said estate, that the defendants pay to said collectors the rents and profits belonging to the estate of Daniel Loughran, Jr., to them, that said defendants have utterly failed to pay any portion of said sums in their hands to said collectors. Copies of said demands are hereto attached and asked to be considered herewith.

XIV. Your complainant says that as the widow of Daniel Loughran, Jr., she is entitled, under the Code of Laws of the District of Columbia, to have and receive as such widow a one-third part of the "net rents, issues and profits" of

[fol. 10] and from all the real estate, or interest in real estate, of which her said deceased husband, Daniel Loughran, Jr., was seized at the time of his death; that no waiver of her said right has been made, nor agreement on her part entered into, inconsistent therewith, and she now asserts her said right to receive "*the one-third part of the net rents and profits thereof,*" as fixed by the Code of Laws of the District of Columbia, and further declares her decision to have and accept said one-third part of said net rents, issues and profits from said real estate, as so granted unto her by the laws of the District of Columbia, and further says that she will not consent to any other method of distribution of said rents and profits, or of any other method of paying or causing to be paid to her the income therefrom, or any commutation of her dower or distributive share in said net rents, issues and profits, and that no other method can legally be asserted by the defendants, except and unless they elect to have all of the real estate of Daniel Loughran, Sr., in which the deceased husband of your complainant had a one-tenth undivided interest at the time of his death, partitioned in kind, or sold in its entirety as provided by Sections 87, 88 and 89 of the Code of Laws of the District of Columbia; that in such case your complainant will be required to receive the moneys apportioned to her under said provision of law, but that pending action of said defendants, or other heirs-at-law of Daniel Loughran, Sr., that she is entitled to receive her one-third portion of the issues, rents and profits from the interest of Daniel Loughran, Jr., in said real estate, and that said defendants cannot legally deny the same, and pending some action by them, or the other heirs-at-law of said Daniel Loughran, Sr., for a partition or sale of said real estate that it is the bounden duty of said defendants to pay over to said collectors the portions of said rents and profits due them as the appointed representatives of the estate of said Daniel Loughran, Jr., and to your complainant the portion thereof due her as the widow of said Daniel Loughran, Jr., and that the repeated persistent and wilful failure of said defendants so to make said payments and the usurpation of the power of the court by said defendants in form and manner herein above alleged requires action by this court for their removal as such trustees and an injunction restraining them from further [fol. 11] collecting and improperly handling and disbursing

said funds, and requires an accounting by said defendants of the funds already received and disbursed by them, and that for the future the equities in your complainant and said collectors requires that a receiver be appointed for the funds now in their hands, and that said receiver be authorized in the future to collect and hold, subject to the order of this court, or the probate court, all funds belonging to the estate of Daniel Loughran, Jr.

Wherefore, being without remedy at law, your complainant prays:

1. That the defendants and each of them answer the exigencies of this bill.

2. That a rule issue out of this honorable court requiring the defendants and each of them to appear and answer herein on a day certain to be named therein, and show cause, if any they have, why they should not be removed and/or restrained and enjoined from acting in the future as trustees or collecting agents of the rents and profits belonging to the estate of Daniel Loughran, Jr., of and from the estate of Daniel Loughran, Sr., deceased, and that they be further ruled to show cause why they should not forthwith pay over to your complainant and to the collectors appointed by the probate court for the estate of Daniel Loughran, Jr., as their respective interests are herein determined, all of the rents and profits by them received, and now held, belonging to the estate of Daniel Loughran, Jr.

3. That for the purposes of enabling this court to properly control and administer the rents and profits belonging to the estate of Daniel Loughran, Jr. that a receiver, or receivers, be appointed by this court with power to receive and hold, and under proper order of this court, disburse to your complainant and the collectors of the estate of Daniel Loughran, Jr., all moneys now in the hands of said defendants belonging to said estate, and with further authority to collect and hold and disburse, under the order of this court, all future monthly rentals due the estate of said Daniel Loughran, Jr., from whatever source the same may be due and payable.

4. That an accounting be required of the defendants as to the rents and profits belonging to the estate of Daniel

Loughran, Jr., by them heretofore received and disbursed, [fol. 12] and for such other and further relief as to the court may seem just and proper.

Ruth Loughran, Complainant.

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*Duly sworn to by Ruth Loughran. Jurat omitted in printing.*

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EXHIBIT "A" TO AMENDED BILL

STATE OF FLORIDA,
Columbia County:

To any Minister of the Gospel or other person authorized to solemnize the rite of matrimony, Greeting:

You are hereby authorized to unite Daniel Loughran and Ruth Saffel Daye in the holy bonds of matrimony, should no lawful impediment appear; making due return to this office as the law directs.

Witness my hand and official seal this 16th day of Jan. 1926.

Guy Gillen, County Judge. (Seal.)

STATE OF FLORIDA,
Columbia County:

I hereby certify that I united the above-named parties in Holy Matrimony this 16th day of Jan. 1926.

J. N. Milton, County Judge.

Witness: R. Crawford and M. T. Thrift.

[fol. 13] STATE OF FLORIDA,
County of Columbia:

I, Guy Gillen, as County Judge in and for aforesaid County, do hereby certify that the above and foregoing attached writing is a true and correct copy of a marriage license recorded in the Marriage License Book H, page 5, of the public records of Columbia County.

Witness my hand and official seal at Lake City, Florida, this 18th day of February, 1929.

(Sgd.) Guy Gillen, County Judge. (Seal.)

EXHIBIT "B" TO AMENDED BILL

IN THE CORPORATION COURT OF THE CITY OF ALEXANDRIA, VIRGINIA

In Chancery

DANIEL LOUGHRAN, Complainant,

vs.

RUTH S. LOUGHRAN, Defendant

In Chancery

RUTH S. LOUGHRAN, Cross-complainant,

vs.

DANIEL LOUGHRAN, Cross-defendant

This cause came on again this 8th day of November, 1929, upon the Bill, Answer and Cross-Bill and upon the evidence heretofore duly taken ore tenus before the Court in support of the Bill and in support of the Answer and Cross-Bill and being argued by counsel,

And the court having maturely considered all of the evidence offered in behalf of each of the parties hereto and it appearing to the Court that the Complainant is now and has been for more than one — prior to the institution of this suit an actual and bona fide resident of this State and City and that the Court has the jurisdiction of the parties and the subject matter of this proceeding, and it further appearing to the court that the complainant has failed to sustain the allegations of his Bill the [fol. 14] same is hereby dismissed and the relief therein prayed for denied.

And it further appearing to the Court upon mature consideration of all the evidence that the Defendant and Cross-Complainant has sustained the allegations in her Cross-Bill and that the complainant and Cross-Defendant wilfully, voluntarily and without just cause deserted and abandoned the Defendant and Cross-Complainant on or about the 15th day of January, 1928, and that there is no probability of a reconciliation between them.

It is, therefore, adjudged, ordered and decreed that the said Cross-Complainant, Ruth S. Loughran, be, and she

hereby is, awarded a divorce a mensa et thoro from the Complainant and Cross-Defendant Daniel Loughran.

It is further adjudged, ordered and decreed that commencing on the first day of October, 1929, the said Complainant and Cross-Defendant, Daniel Loughran, shall pay to the said Ruth S. Loughran the sum of Seventy Dollars, ($70.00) per month, payable on the first day of each month thereafter until the further order of the Court herein, and that all alimony unpaid up to the first day of October, 1929, shall be in accordance with the decree heretofore entered herein; and it is further adjudged, ordered and decreed that the said Complainant and Cross-Defendant, Daniel Loughran, shall pay to Moncure, Davis and Budwesky and Austin F. Canfield, Attorneys for the said Ruth S. Loughran, the further sum of Five Hundred Dollars ($500.00) as counsel fees for services to the said Defendant and Cross-Complainant herein.

To which action of the Court in dismissing Complainant's Bill of Complaint and granting the relief prayed for by the Defendant and Cross-Complainant in her Cross-Bill, and in granting the Defendant alimony and counsel fees, Complainant by counsel excepted.

And it being suggested by Counsel for the original Complainant that it is the purpose of said original complainant to apply for an appeal from this decree to the Supreme Court of Appeals of Virginia, the operation of this decree is hereby suspended for a period of sixty days, providing Complainant within ten days of the entry of this order give bond in the sum of One Thousand Dollars, with surety to be approved by the Clerk of this Court, conditioned as the law directs.

[fol. 15] Copy

Robert H. McNeill, Investment Bldg., Washington, D. C.

May 14, 1932.

Messrs. John Loughran, Joseph Loughran, and Charles Loughran, trustees estate of Daniel Loughran, deceased, Washington, D. C.

In re Estate Daniel Loughran

GENTLEMEN:—As collectors for the estate of Daniel Loughran, we hereby request an accounting of all rents and

profits of said estate belonging to Daniel Loughran, together with check for the amount accrued and due said estate.

We make this request by reason of our appointment as collectors to said estate by Mr. Justice Bailey by order of court May 3, 1932.

This confirms oral request made to Mr. John Loughran by telephone by Mr. McNeill on Thursday of this week, May 12th. Will you also please release to us possession of one Buick automobile, 1931 model and jewelry belonging to said estate of Daniel Loughran.

In giving an account for the rents and profits please advise what has been accumulated, and what money was on hand and belonging to said estate at the time of the death of Daniel Loughran, and what has accrued since.

Very truly yours, (Sgd.) R. H. McNeill.

RHMcN.:EA.

Copy

Robert H. McNeill, Investment Bldg., Washington, D. C.

May 24, 1932.

Mr. William E. Leahy, Investment Building, Washington, D. C.

In re Estate Daniel Loughran

DEAR MR. LEAHY: You have in your file copy of a statement of account of Mrs. Ruth Loughran against the Daniel Loughran estate showing due her by her contentions $2436.66.

[fol. 16] I think she is presently entitled to receive the amount of accrued rents since Daniel Loughran's death, and that she should also receive the accrued alimony admittedly due.

Rather than have me file a petition in the Court authorizing the payment of these amounts or substantial portions thereof, would you not be willing to recommend to John Loughran that a payment of these sums be made, so that we will not have any controversy about them in court?

May I also ask you to have Mr. John Loughran submit to the Collectors, him and myself, a detailed statement of the following:

1. Accrued rents belonging to Daniel Loughran at the time of his death.

2. Gross rents received and belonging to him since his death, less itemized deductions.

Then a check could be drawn by Mr. John Loughran and the other trustees, to John Loughran and myself, as Collectors, for the amount due Daniel Loughran's estate.

Also please advise what you think should be done as to the payment of the note at the Liberty National Bank.

I feel that we should have an immediate conference about this whole matter so that we can agree in detail on the above points and dispose of them without taking a great deal of time.

Very truly yours, (Sgd.) R. H. McNeill.

R.H.McN:EA.

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IN SUPREME COURT OF DISTRICT OF COLUMBIA

RULE TO SHOW CAUSE—Filed August 29, 1932

This cause coming on to be heard upon the Amended Bill of Complaint and exhibits herein filed, it is now on motion of the attorney for the complainant, by the court, this 29th day of August, 1932.

Ordered that the defendants and each of them appear herein and show cause on or before the 7th day of September, 1932, why they should not be removed and/or restrained and enjoined from acting in the future as such trustees or collecting agents of the rents and profits belonging to the estate of Daniel Loughran, Jr., and why they [fol. 17] should not be required forthwith to pay over to Ruth Loughran, complainant herein, and/or to R. H. McNeill and John Loughran, as collectors of the estate of Daniel Loughran, Jr., all of the rents and profits due said estate, collected by them from an undivided interest of said Daniel Loughran, Jr., in real estate holdings belonging to the estate of Daniel Loughran, Sr., as their rights are determined by this Court herein.

Said defendants are further required to show cause, if any they have, on the date above stated, why a receiver,

or receivers, should not be appointed by this court with power to collect and hold and disburse, by order of this court, all moneys now in the hands of said defendants belonging to the estate of Daniel Loughran, Jr., as well as all future monthly rentals belonging to said estate from whatever source the same may be due and payable, and further why said defendants should not be required to render herein a full accounting of their administration as trustees and collecting agents of the rents and profits due the estate of Daniel Loughran, Jr., of and from the real estate holdings of the estate of Daniel Loughran, Sr., or from any other source.

Provided, a copy of this Order shall be served upon said defendants on or before 1st day of September, 1932.

Daniel W. O'Donoghue, Justice.

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MARSHAL'S RETURNS

Served a copy of the above rule on John Loughran 8-30-32 personally.

Edgar C. Snyder, U. S. Marshal in and for the Dist. of Columbia, by W. J. Roberts, B., Deputy U. S. Marshal.

Within named Joseph Loughran, Charles Loughran each not to be found 9-7-32.

Edgar C. Snyder, U. S. Marshal in and for the District of Columbia, by W. J. Roberts, Deputy U. S. Marshal.

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[fol. 18] IN SUPREME COURT OF DISTRICT OF COLUMBIA

JOINT AND SEVERAL RETURN TO RULE TO SHOW CAUSE—Filed September 7, 1932

John Loughran, Joseph Loughran, and Charles Loughran, respondents to rule to show cause issued herein, reserving to themselves all objections and exceptions by way of motion to dismiss or otherwise to the Bill of Complaint herein, for return to the rule to show cause heretofore issued upon said Bill of Complaint, respectfully state as follows:

1. They are without knowledge as to the residence of complainant and to her citizenship as alleged in paragraph 1 of her bill.

2. These respondents admit that they are each a citizen of the United States and resident of the District of Columbia and as to the remaining allegations of said paragraph they are advised no answer is required of them.

3. These respondents are without knowledge as to the removal of the complainant from the District of Columbia and her home and residence in the State of Florida, also as to the fact and date of her marriage to Daniel Loughran, Jr., all as in this paragraph averred. They admit that the complainant was divorced absolutely from her husband, but advise the court that it was he, her husband, Henry Daye, who obtained an absolute divorce from this complainant in this court holding an equity court because of her adultery committed with Daniel Loughran, Jr. That Daniel Loughran, Jr. was named the co-respondent in said cause in this court and the court entered its decree for complainant's then husband and against her upon the ground of adultery having been found by this court with the co-respondent, Daniel Loughran, Jr., as hereinbefore set out.

4. These defendants are without knowledge as to the allegations of fact set forth in this paragraph of complainant's bill.

5. These respondents are advised the allegations of this paragraph are argumentative and but conclusions of law, requiring no answer from them.

6. Answering so much of this paragraph as alleges facts, these respondents admit the death of their father, Daniel Loughran, Sr., as alleged, and that he left as his heirs-at-[fol. 19] law those mentioned in said paragraph with the exception of Donald Carter, who was not the heir-at-law of Daniel Loughran, Sr. at the time of his death. They admit that the said Daniel Loughran, Sr., died seized of valuable real estate in the District of Columbia, to a large extent rented and producing large revenues, as averred. They deny the remaining allegations of said paragraph as being conclusions of law and contrary to the terms of the last will and testament of Daniel Loughran, Sr., which has been admitted to probate in this court, and reference

thereto is hereby made and incorporated herein as if herein fully set out. They aver the fact to be that by the said last will and testament of the said Daniel Loughran, Sr., he devised and bequeathed all the rest and residue of his estate, real, personal and mixed, after specific bequests thereinbefore bequeathed, to his wife, Mary Loughran for and during her life, and after her death to these three respondents and their brother, as trustees in trust for the use and benefit of the ten children of the said testator until the youngest of his said children should attain the age of twenty-five years, with full power to receive and collect the rents, issues and profits from said estate and to pay all proper taxes, insurance, charges and expenses against said estate, and to divide the net proceeds and income from said estate semi-annually and equally among the said ten children; that upon the youngest of his said children attaining the age of twenty-five years, then his said estate to vest in ten equal shares, one share in fee simple to each of nine of said ten children, and the remaining one-tenth to these three respondents and their brother Leo, as trustees, in trust for Mrs. Mary Loughran Duke, a daughter of said testator, for her said use and benefit for and during her life, with full power in said trustees to invest said share or the net proceeds or principal thereof in improved real estate or loans on improved real estate situate in the District of Columbia; to receive and collect the rents, issues and profits from said share or estate and to pay all proper taxes, insurance, charges and expenses against said share or estate and to pay over the net proceeds and income from said share or estate to his said daughter, Mary Loughran Duke, as aforesaid, for her sole use and benefit during her life, and after her death said share was to vest in fee simple, share and share alike in any child or children of [fol. 20] said Mary Loughran Duke, their heirs and assigns. They further aver that their brother, Leo Loughran, is now deceased and that the youngest child of their father, Daniel Loughran, Sr., for some years last past attained the age of twenty-five years, so that the sole authority vested in these respondents as trustees, under the said last will and testament of Daniel Loughran, Sr., is with respect to the one-tenth equal share in said estate devised to them as trustees for and during the life of their sister, Mrs. Mary Loughran Duke, and upon her death that

trust terminates by, under and in accordance with the terms of the said last will of Daniel Loughran, Sr., aforesaid. They further aver that upon the happening of the event of the youngest child having attained the age of twenty-five years all of the heirs-at-law of Daniel Loughran, Sr., by mutual consent entered into an agreement in writing wherein and whereby all of said heirs-at-law agreed among themselves and each with the other, that the residue of the estate of Daniel Loughran, Sr., which theretofore had vested as to an equal one-tenth share thereof in nine of said heirs-at-law and the remaining one-tenth in these respondents and their brother Leo Loughran, as trustees for their sister, Mary Loughran Duke, as hereinbefore set out, should be held intact and not distributed by way of partition, sale or otherwise, each and all of said heirs-at-law being convinced that it was an unfavorable market upon which to place real estate in order to convert the same into cash for purposes of distribution, and therefore they entered into the agreement hereinbefore mentioned under which they conferred upon these three respondents and their brother Leo Loughran full power and authority to manage and control the said properties, representing the residue of the said estate of Daniel Loughran, Sr., and which had become vested in them, as hereinbefore set out. That having particular confidence in the integrity and ability of these three respondents and their brother, the said heirs-at-law aforesaid, have operated under said agreement aforesaid in the management and control of said real estate vested in these three respondents alone since the death of their brother, Leo, and that said agreement is still binding and in full force and effect. While admitting, therefore, that they are managing said estate without authority from the last will and testament of Daniel Loughran, Sr., they deny that they are voluntary trustees, [fol. 21] do son tort, in the collection of rents and the management of the real estate, hereinbefore set out, but aver the fact to be that they have acted strictly in accordance with the terms of the agreement by, under and in accordance with which each and all of the heirs-at-law of Daniel Loughran, Sr., voluntarily entered into the said agreement under which these three respondents have been managing and controlling the said real estate aforesaid, for several years last past.

7. These respondents admit that they have been collecting the rents and profits of said real estate, but aver that their collection of rents and management of said properties is strictly in accordance with the agreement in paragraph 6 hereof described.

8. These respondents admit that Daniel Loughran, Jr., died leaving a last will and testament which was duly filed in the probate branch of this Honorable Court and that a protest to the probate of said last will and testament was presented attacking the jurisdiction of this court over the estate of Daniel Loughran, Jr., by bringing in question the domicile of said Daniel Loughran, Jr., at the time of his death. These respondents further aver that it was this complainant who filed said protest; that in the probate branch of this Honorable Court she is now attacking the jurisdiction of this court over this estate and at the same time filing this her Bill of Complaint in this court appealing to it to exercise its jurisdiction over said estate.

9. These respondents are without knowledge as to the averments of this paragraph, but admit that this complainant has filed a claim as a creditor of the estate of Daniel Loughran, Jr. in the probate branch of this court.

10. These respondents deny that they have been collecting any rents and profits of the real estate of Daniel Loughran, Sr., aforesaid, and aver the fact to be that they are collecting the rents and profits belonging to the heirs-at-law and devisees under the last will and testament of Daniel Loughran, Sr. That the estate has long since vested, as hereinbefore set forth, and that the estate of Daniel Loughran, Sr., has long since been closed. Any rents and profits, therefore, collected by them were rents and profits belonging to the heirs-at-law and devisees under the last will and testament of Daniel Loughran, Sr., who were his [fol. 22] ten children, who entered into the agreement hereinbefore in paragraph 6 of this return described. Whatever sums collected by these respondents either have been or can be accounted for easily, strictly, and with full accuracy, and that they, as trustees, are ready and willing at any time to pay over whatever sum may be found to be due the estate of Daniel Loughran, Jr., upon a proper showing of the amount and basis of said indebtedness.

These respondents are advised that this complainant has no authority whatsoever to question their conduct of the collection of the rents and profits or the payment thereof insofar as the estate of Daniel Loughran, Jr. is concerned. They aver the fact to be that collectors have been appointed by this Honorable Court to conserve the assets of this estate, and that any question involving the failure of these respondents to pay over to said estate any sum or sums alleged to be due it is one to be raised by the collectors of this estate and not this complainant. They admit that no money has been paid by them to this complainant for the reason that the said complainant has stubbornly refused to take any position with reference to her assignment of dower. That these respondents went to considerable trouble and expense to have the properties belonging to the heirs-at-law and devisees of Daniel Loughran, Sr., appraised by a competent real estate appraiser in the District of Columbia in order to advise this complainant and inform her as to the approximate value of the interest of Daniel Loughran, Jr., so that she might be advised with regard to her assertion of her right to dower in the estate of Daniel Loughran, Jr. That said complainant has consistently up to the present maintained an exaggerated and excessive valuation upon what she considers to be her dower interest in said estate and has attempted to coerce these respondents into paying her a sum of from Thirty to Fifty Thousand Dollars by way of settlement of her dower right and in attempting to accomplish that purpose has filed her protest to the probate of the last will and testament of Daniel Loughran, Jr., as hereinbefore set out, questioning the jurisdiction of this court over said estate, and then instituting this action in which she claims as her dower interest one-third of the net rents and profits, although she has constantly refused to proceed by, under and in accord-
[fol. 23] ance with the Code of Law in full force and effect in this District with regard to the assignment of dower to any widow entitled thereto. These respondents deny emphatically that they have embarrassed or humiliated this complainant by withholding payment from the rents and profits of the estate of Daniel Loughran, Jr. They deny that they have been prompted by any desire to embarrass this complainant so as to coerce her to agree to some inequitable, unfair and unjust settlement of her rights as a

creditor and as the widow of Daniel Loughran, Jr., deceased. They aver as respondents in this cause they have no interest or authority to question the right of any creditor of the estate of Daniel Loughran, Jr., but aver that at this time they are without security in paying over any portion of the funds belonging to the estate of Daniel Loughran, Jr. to this complainant, as they have neither the order of this Honorable Court to protect them, nor any other instrument in writing by way of agreement or otherwise by which this complainant is bound and obligated and under which if this complainant is entitled to payment from the estate of Daniel Loughran, Jr., these respondents would be protected in making the same from subsequent demands either of the collectors of the estate of Daniel Loughran, Jr., or the claims of this complainant should she later change her position from that assumed in her Bill of Complaint now filed. They further aver that they have never attempted to coerce this complainant or to deny her whatever right she has in the estate of Daniel Loughran, Jr., and when, if and as her said rights are determined they state they are ready and willing to accord them to her to the fullest extent.

12. These respondents are advised that this complainant is without right to assert complaint against them in reference to matters and things alleged in this paragraph. That if, as therein averred, they have wrongfully paid the debts of the estate of Daniel Loughran, Jr., then complaint in that regard should come not from this complainant, but from the collectors of the estate of Daniel Loughran, Jr., aforesaid. They further aver that the said paragraph is argumentative and filled with legal conclusions requiring no further answer from them.

[fol. 24] 13. These respondents make the same reply to the allegations of fact contained in this paragraph that they made in paragraph 12 herein. They make the same reply as hereinbefore made with reference to the demands of this complainant for money to be paid over to her by them, that they are without security and protection in paying this complainant any monies from the estate of Daniel Loughran, Jr., unless and until this complainant has had her dower assigned to her by this Honorable Court in accordance with the law in force, and that when this Honorable Court has determined that question then they are

ready, willing and able to comply fully with the order of the court.

14. These respondents are advised that the averments of this paragraph are entirely legal conclusions requiring no answer from them.

15. And further answering, these respondents say that the rest and residue of the estate of Daniel Loughran, Sr., of which he died seized and possessed and which vested in the ten heirs-at-law and devisees of the said Daniel Loughran, Sr., consisted almost exclusively of real estate holdings in the District of Columbia which were rented and producing properties. That this complainant has never made any attempt to have her dower in this estate assigned. That at the present time this Honorable Court and these respondents are unadvised as to whether the dower of this complainant, if she is entitled thereto, could not be assigned to her by metes and bounds, and that until that question has been determined this complainant is in no position to make application to this Honorable Court for assignment of her dower in the net rents and profits of the estate of Daniel Loughran, Jr. They further aver that she has neither legal right nor equity in her present position with regard to the matters and things complained of in her said Bill of Complaint for the purpose of obtaining the unusual and extraordinary relief sought in the prayers of her amended bill. They aver that prior to her marriage, as alleged, to Daniel Loughran, Jr., she was and had been for some years theretofore the lawful wife of one Henry Daye and that he, as the husband of this complainant, then known as Ruth Daye, filed in this court on the equity side thereof, his petition for an absolute divorce from this complainant, in Equity cause No. 43202. They make part of this their answer to this Bill of Complaint the [fol. 25] petition, answer and decree in said cause aforesaid as if fully set out and respectfully ask this Honorable Court to judicially notice this cause in support of this their answer. They further say that in this cause Daniel Loughran, Jr., was named co-respondent and that on December 12, 1924 this Court, acting through Mr. Justice A. A. Hoehling, decreed a final and absolute divorce to Henry Daye against and from his then wife and this complainant, Ruth Daye, by reason of her adultery with the co-respondent Daniel Loughran, Jr., as alleged in the bill of complaint filed in that

cause. They further aver that by, under and in accordance with Section 966 of the Code of Laws of the District of Columbia this complainant was denied the right of re-marriage. They state, however, that said complainant directly contrary to and in violation of the terms of this statute married Daniel Loughran, Jr., the co-respondent in the proceedings hereinbefore named. They allege that, having openly and in utter disregard of the prohibition contained in said statute violated the terms thereof, she cannot now return to this jurisdiction and this Honorable Court and herein make application for relief with respect to the very situation and relationship which she could and did create only in direct violation of the prohibitory mandate of the statute hereinbefore mentioned in full force and effect in this District and which this Honorable Court is bound to respect and administer. That the declaration by the Congress of the United States in Section 966 was a legislative declaration of a general public policy to govern in this District and which should govern and control the conduct of those found guilty of adultery in the courts thereof. They say, therefore, that this complainant is without right to ask or expect to receive from the courts of this jurisdiction, and especially in equity, the extraordinary relief and assistance which she prays in her said amended bill, and that she should be left with respect to that situation and relationship, which she created by violation of the law of this District, where her own misconduct in violating said law has placed her.

16. These respondents further allege that the said amended bill of complaint should not be entertained by this Honorable Court for the reason that upon hearing the Mo- [fol. 26] tion to Dismiss her original Bill of Complainant herein the said Bill was ordered dismissed, with leave granted *in* said complainant to file an amended bill within ten days thereafter. The order of this Honorable Court was signed on the 17th day of August, 1932, and this Amended Bill was not filed until the 29th day of August, 1932.

Wherefore the premises considered, respondents submit that the rule heretofore issued in this cause should be dismissed.

John Loughran, Joseph Loughran, Charles Loughran, William E. Leahy, Attorney for Respondents.

*Duly sworn to by John Loughran. Jurat omitted in printing.*

In Supreme Court of District of Columbia

Order Discharging Rule—Filed September 17, 1932

This cause coming on to be heard upon the rule to show cause issued upon the amended bill filed by the complainant herein, and the joint and several answer of the respondents to said rule, it is, by the Court, this 17th day of September, 1932,

Ordered that the said rule to show cause be and the same is hereby discharged without prejudice.

Jennings Bailey, Justic.

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[fol. 27] In Supreme Court of District of Columbia

Stipulation Adopting Answer to Rule as Answer to Bill —Filed September 17, 1932

Now come the parties hereto, by their attorneys, as evidenced by their signatures subscribed hereto, and stipulate that the joint and several answer of the respondents to the rule to show cause issued upon the amended bill filed by the complainant herein may be adopted by the respondents herein as and for their joint and several answer to said amended bill, and that the said answer to said rule hereinbefore mentioned may stand as the joint and several answer of the said respondents to the amended bill herein.

Robert H. McNeill, Attorney for Complainant. William E. Leahy, Attorney for Respondents.

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In Supreme Court of District of Columbia

Motion to Set Down Cause for Hearing on Bill and Answer—Filed September 17, 1932

Now comes the complainant, by her attorney, and moves the Court to set this cause for hearing on Bill and Answer.

Robert H. McNeill, Attorney for Complainant.

IN SUPREME CUORT OF DISTRICT OF COLUMBIA

DECREE—Filed September 17, 1932

This cause coming on to be heard upon the Amended Bill of Complaint, Rule to Show Cause issued herein, the Answer to the Rule to Show Cause, and the Answer to said Amended Bill of Complaint, and the same being considered, and counsel being heard, and it appearing to the satisfaction of the Court that the complainant herein is the widow of Daniel Loughran, Jr., deceased, and that [fol. 28] said Daniel Loughran, Jr., deceased, at the time of his death was seized and possessed of a one-tenth (1/10) undivided interest in the real estate belonging to Daniel Loughran, Sr., deceased, his father, and that there has accrued to the estate of said Daniel Loughran, Jr., deceased, and to his widow, the complainant herein, the sum of Three Thousand, Eight Hundred, Fourteen and 67/100 Dollars, ($3,814.67), from the net rents, issues and profits of and from said real estate and interest in the same, and that the complainant herein, under the laws of the District of Columbia, is entitled to a "one-third part of the net rents and profits" so accrued and due, and said complainant in open court, by her attorney of record, appearing and electing to take and receive, in lieu of other provisions for the allotment and setting apart to her of her dower interest in the real estate of her said deceased husband Daniel Loughran, Jr., said third of said net rents and profits, so accrued, it is now, by the Court, this 17th day of September, 1932,

Ordered, adjudged, and decreed that the defendants herein pay to the complainant the sum of One thousand, two hundred seventy-one and 55/100 Dollars ($1,271.55), as accrued rents, issues and profits due her as the widow of said Daniel Loughran, Jr., deceased, as her share of the net rents, issues and profits of and from the one-tenth (1/10) interest of said Daniel Loughran, Jr., in the real estate and the rents and profits thereof belonging to him, and of which he was seized and possessed at the time of his death, same being a one-tenth (1/10) undivided interest in the real estate holdings of his deceased father, Daniel Loughran, Sr., deceased, as set out in the Amended Bill of Complaint and admitted in the answer, said sum being the accrued rentals admitted by the defendants herein

to be due said complainant up to September 1, 1932; and it is further

Ordered, adjudged, and decreed that from and after September 1, 1932, said defendants are directed to pay monthly to said complainant, or her attorney of record, on or before the tenth day of each month a full one-third (⅓) of the net rents, issues and profits collected by them from the real estate interests belonging to the estate of Daniel Loughran, Jr., deceased, of which he was seized and possessed at the [fol. 29] time of his death, as set out in said Amended Bill of Complaint.

Jennings Bailey, Justice.

I consent as to form.

William E. Leahy, Attorney for Defendants.

From the above decree the defendants in open Court note an appeal to the Court of Appeals of the District of Columbia and thereupon the Court fixed the amount of the Cost bond on appeal at $50.00 Cash or an undertaking with good and sufficient surety in the sum of $100.00 and the amount of the supersedeas herein in the sum of twenty-five hundred dollars.

Jennings Bailey, Justice.

MEMORANDUM

September 26, 1932.—Supersedeas Bond ($2,500) approved and filed.

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IN SUPREME COURT OF DISTRICT OF COLUMBIA

ASSIGNMENT OF ERRORS—Filed October 4, 1932

It is respectfully submitted that in signing the decree of September 17, 1932, the trial court erred and the following errors are assigned upon this appeal as errors committed by the presiding Judge in the Supreme Court of the District of Columbia upon the hearing of this cause:

1. The Court erred in signing the decree dated September 17, 1932.

2. The Court erred in not holding it matter of law that the complainant herein was without equity to entitle her to the relief sought.

3. The Court erred in not holding that the complainant herein, as matter of law, was without right to seek the aid of this Court holding an Equity Court in the matter of the relief prayed in her petition.

4. The Court erred in assigning to the complainant dower in the net rents, issues and profits of the interest of which [fol. 30] Daniel Loughran, Junior, died seized and possessed in the estate of his father, Daniel Loughran, Senior.

5. The Court erred in not denying to the complainant in the Supreme Court of the District of Columbia, holding an Equity Court, any relief in the matter of dower as prayed.

6. The Court erred in not holding, as matter of law, that the said complainant was without equity in seeking relief from the Supreme Court of the District of Columbia, holding an Equity Court, for the reason that she had violated the mandate of Section 966 of the Code of Laws for the District of Columbia.

7. The Court erred in not holding that the said complainant was barred from seeking relief in the Supreme Court of the District of Columbia, holding an Equity Court, when it appeared upon the face of the bill and answer thereto that she had remarried Daniel Loughran, Junior, in violation of the mandate of Section 966 of the said Code of Laws for the District of Columbia aforesaid.

William E. Leahy, Attorney for Defendants.

Service of the foregoing acknowledged this 4th day of October, 1932.

Robert H. McNeill, by Geo. H. McNeill, Attorney for Complainant.

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In Supreme Court of District of Columbia

Designation of Record—Filed October 4, 1932

The defendants having perfected an appeal herein to the Court of Appeals of the District of Columbia on the 17th

day of September, 1932, hereby request the Clerk of the Supreme Court of the District of Columbia to prepare, at defendants' expense, a transcript of the record on appeal, including therein the following papers and proceedings, namely:

1. The amended bill;
2. The Rule to show cause.
3. The answer to the rule.
4. The order dismissing the rule.
5. The stipulation allowing answer to rule to stand as answer to amended bill.

[fol. 31] 6. The motion setting case down on bill and answer for hearing.

7. Decree, September 17, 1932.
8. Memo.—appeal noted in open court, September 17, 1932.
9. Memo.—cost and supersedeas bond filed, September 26, 1932.
10. Assignment of errors.
11. Together with a copy of this designation.

William E. Leahy, Attorney for Defendants.

Service of foregoing acknowledged this 4th day of October, 1932.

Robert H. McNeill, by Geo. H. McNeill, Attorney for Complainant.

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Clerk's certificate to foregoing transcript omitted in printing.

Thursday, June 8th, A. D. 1933.

No. 5868

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Appellants,

vs.

RUTH LOUGHRAN

The argument in the above entitled cause was commenced by Mr. James F. Reilly, attorney for the appellants, and was continued by Mr. R. H. McNeill, attorney for the appellee, and was concluded by Mr. James F. Reilly, attorney for the appellants.

(Mr. Justice Robb not sitting.)

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IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5868

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Appellants,

v.

RUTH LOUGHRAN

Appeal from the Supreme Court of the District of Columbia

(Argued June 8, 1933. Decided June 26, 1933)

W. E. Leahy, James F. Reilly, of Washington, D. C., for appellants.

R. H. McNeill, George H. McNeill, of Washington, D. C., for appellee.

Before Martin, Chief Justice; Van Orsdel, Hitz, and Groner, Associate Justices

VAN ORSDEL, Associate Justice:

This suit was brought in the Supreme Court of the District of Columbia by appellee, plaintiff below, to recover her

dower interest in the rents, issues, and profits in the estate of her deceased husband, Daniel Loughran, Jr. The suit was against the trustees of the estate of Daniel Loughran, Sr., the father of Daniel Loughran, Jr. The case was heard upon amended bill and answer, and a decree entered for plaintiff, from which defendants appeal.

It appears that plaintiff married Henry Daye, who obtained a decree of absolute divorce from her in the Supreme Court of the District of Columbia December 12, 1924, on the ground of adultery, the corespondent in that proceeding being Daniel Loughran, Jr. Later plaintiff and Daniel Loughran, Jr., were married in Florida on January 16, 1926. In July, 1927, Daniel Loughran, Jr., filed a suit for divorce from plaintiff in the Corporation Court of Alexandria, Virginia. Plaintiff filed a cross bill, and on November 8, 1929, the prayers of the cross bill were granted and plaintiff was given a divorce a mensa et thoro from Daniel Loughran, Jr., with alimony at the rate of $70.00 a month. Thereafter, Daniel Loughran, Jr., took up his residence in the District of Columbia, where he died on September 6, 1931, leaving a last will and testament, which was filed for probate in the Supreme Court of the District of Columbia. Plaintiff protested the probate of the will on the ground that this was not the domicile of the deceased. Collectors were appointed pending the disposition of the plaintiff's protest in the probate court.

The single question for determination here is, whether or not the plaintiff is entitled to her dower interest in the estate of Daniel Loughran, Jr. We are of opinion that the decree of absolute divorce obtained by her first husband, Daye, on the ground of adultery bars the right of plaintiff to recover in this action. Section 966, D. C. Code, provides as follows: "A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: Provided, That in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other."

It is unnecessary for us to concern ourselves with the legality of the Florida marriage in that State, or with the subsequent divorce proceedings in the State of Virginia, since the disposition of the case is dependent entirely upon the law of the District of Columbia. Insofar as the law of

the District is concerned, the marriage between plaintiff and Daniel Loughran, Jr., in Florida, if performed in the District of Columbia, would be absolutely void, and the plaintiff, being the offending party against the law of the District, is in no position to enforce any claim against the estate of Daniel Loughran, Jr., growing out of the marriage in Florida.

The case of Olverson v. Olverson (293 Fed. 1015; 54 App. D. C. 48), is decisive of the issue here involved. In that case the wife had been held guilty of adultery in a divorce suit in which she was defendant in the Supreme Court of the District of Columbia. Thereafter she married Olverson in Baltimore. They returned and took up their residence here. The guilty wife brought suit in the District for alimony against the husband she had married in Baltimore. Without regard to the question of the legality of the marriage in Maryland under the Maryland law, this court in denying relief said:

"We do not think that the courts of the District can be used for that purpose. The appellant deliberately set at naught a District statute, which she was bound to respect and obey, and she cannot now ask the courts of this jurisdiction to relieve her of the obligations of a relation which she wilfully and wrongfully assumed, or to enforce the right to support which would have been hers had the relation been lawfully contracted in the District. It is the special duty of courts to discourage infractions of the laws and fixed policies of the particular division of the national domain to which they are accredited, and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts without bringing such laws and policies into contempt. Jurisdictional tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction. * * * We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of section 966, should not be permitted to take advantage of his or her wrong, and should be left as found in the relation unlawfully undertaken."

This opinion is supported by overwhelming authority, and is in every respect decisive of the present case. It is unnecessary to waste time in considering the doctrine of

"clean hands" as applicable to this case. Plaintiff, by her own unlawful conduct has placed herself without the pale of the law, and cannot be heard in a court of equity to take advantage of her own wrong.

The decree of the court below is reversed with costs, and the cause remanded for further proceedings not inconsistent with this opinion.

Josiah A. Van Orsdel, Associate Justice.

A true copy. Teste:

——, Clerk Court of Appeals, D. C.

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Monday, June 26th, A. D. 1933.

No. 5868, April Term, 1933

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Appellants,

vs.

RUTH LOUGHRAN

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice Van Orsdel, June 26, 1933.

Mr. Justice Robb took no part in the consideration or decision of this case.

MEMORANDUM

July 10, 1933.—Petition for Rehearing and Stay of Mandate filed.

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Tuesday, August 8th, A. D. 1933.

No. 5868

JOHN LOUGHRAN et al., Appellants,

vs.

RUTH LOUGHRAN

On consideration of the petition for rehearing and stay of mandate filed herein, it is ordered that a rehearing be and it hereby is denied, and it is further ordered that the mandate be and it hereby is stayed for 30 days from today under Rule 24.

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IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1933

No. 5868

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Appellants,

vs.

RUTH LOUGHRAN, Appellee

DESIGNATION OF RECORD

The Clerk of the Court of Appeals of the District of Columbia, in the preparation of the transcript of record on petition for certiorari of the above case to the Supreme Court of the United States, will include the following papers, namely:

1. Transcript of Record.
2. Memorandum of Argument.
3. Opinion of the Court of Appeals.
4. Memorandum of filing Petition for Rehearing.

5. Order denying rehearing.
6. Judgment.
7. This designation.
8. Clerk's certificate.

McNeill & McNeill, by Robert H. McNeill, 705 Investment Bldg., Attorney for Appellee, Ruth Loughran.

Endorsed: 5868. John Loughran et al., Appellants, vs. Ruth Loughran. Designation of Record. Court of Appeals, District of Columbia. Filed September 8, 1933. Henry W. Hodges, Clerk.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 39, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of John Loughran, Joseph Loughran, and Charles Loughran, Trustees of the Estate of Daniel Loughran, Sr., Appellants, vs. Ruth Loughran, No. 5868, April Term, 1933, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 8th day of September, A. D. 1933.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

[fol. 41] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 4, 1933

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,168. District of Columbia Court of Appeals. Term No. 565. Ruth Loughran, Petitioner, vs. John Loughran, Joseph Loughran and Charles Loughran, Trustees of the Estate of Daniel Loughran, Sr. Petition for a writ of certiorari and exhibit thereto. Filed October 31, 1933. File No. 565, O. T., 1933.